

AMENDED IN SENATE JULY 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 64

Introduced by Assembly Member Cohn
(Coauthor: Senator Murray)

December 21, 2004

An act to amend Section 653w of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 64, as amended, Cohn. Recording crimes.

Existing law provides that a person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she advertises, sells, rents, manufactures, or possesses for those purposes, a recording or audiovisual work that does not disclose the name of the manufacturer, author, artist, performer, or producer, as specified. Failure to disclose the origin of a recording or audiovisual work is punishable by imprisonment in a county jail, imprisonment in the state prison, and fine, or by both imprisonment and fine, as specified, depending on the number of articles of audio recordings or audiovisual works involved, and whether the offense is a first offense, or 2nd subsequent offense.

This bill would reduce the required number of audio recordings involved necessary to prosecute this offense as a felony. Because this bill would increase the prosecutorial duties of local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653w of the Penal Code is amended to
2 read:

3 653w. (a) A person is guilty of failure to disclose the origin
4 of a recording or audiovisual work if, for commercial advantage
5 or private financial gain, he or she knowingly advertises or offers
6 for sale or resale, or sells or resells, or causes the rental, sale or
7 resale, or rents, or manufactures, or possesses for these purposes,
8 any recording or audiovisual work, the cover, box, jacket, or
9 label of which does not clearly and conspicuously disclose the
10 actual true name and address of the manufacturer thereof and the
11 name of the actual author, artist, performer, producer,
12 programmer, or group thereon. This section does not require the
13 original manufacturer or authorized licensees of software
14 producers to disclose the contributing authors or programmers.

15 As used in this section, “recording” means any tangible
16 medium upon which information or sounds are recorded or
17 otherwise stored, including any phonograph record, disc, tape,
18 audio cassette, wire, film, or other medium on which information
19 or sounds are recorded or otherwise stored, but does not include
20 sounds accompanying a motion picture or other audiovisual
21 work.

22 As used in this section, “audiovisual works” are the physical
23 embodiment of works that consist of related images that are
24 intrinsically intended to be shown ~~by the use of~~ *using* machines
25 or devices such as projectors, viewers, or electronic equipment,
26 together with accompanying sounds, if any, regardless of the
27 nature of the material objects such as films or tapes on which the
28 works are embodied.

29 (b) Any person who has been convicted of a violation of
30 subdivision (a) shall be punished as follows:

31 (1) If the offense involves the advertisement, offer for sale or
32 resale, sale, rental, manufacture, or possession for these purposes,
33 of at least 100 articles of audio recordings or 100 articles of

1 audiovisual works described in subdivision (a), the person shall
2 be punished by imprisonment in a county jail not to exceed one
3 year, or by imprisonment in the state prison for two, three, or five
4 years, or by a fine not to exceed two hundred fifty thousand
5 dollars (\$250,000), or by both.

6 (2) Any other violation of subdivision (a) not described in
7 paragraph (1), shall, upon a first offense, be punished by
8 imprisonment in a county jail not to exceed one year, or by a fine
9 not to exceed twenty-five thousand dollars (\$25,000), or by both.

10 (3) A second or subsequent conviction under subdivision (a)
11 not described in paragraph (1), shall be punished by
12 imprisonment in a county jail not to exceed one year or in the
13 state prison, or by a fine not to exceed one hundred thousand
14 dollars (\$100,000), or by both.

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the
20 penalty for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition of a
22 crime within the meaning of Section 6 of Article XIII B of the
23 California Constitution.